CLARIFICATION OF THE MISCONCEPTION CONCERNING

NON-COMBATANTS IN WAR AND WEAPONS OF MASS DESTRUCTION

By Shaykh al-Alamah Nasir al-Fahd فـك الله أسـره

مكتبة توحيد

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بسم الله الرحمن الرحيم

PREFACE

In the world we live today it has become very normal for the disbelievers of the west to slander the Mujahidin as terrorists, even when it was the same people who attacked the Muslim lands and killed women and children ruthlessly. This has become such a problem that many Muslims will stray of the path of Jihad because they think it is 'terrorism' and 'haram'. The content below refutes that notion.

This small treatise is a translated part of the book of Shaykh Nasir Al-Fahd — May Allāh hasten his release — titled "حكم استخدام أسلحة دمار الشامل ضد الكفار".

DISCLAIMER

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WHAT THE SUNNAH SAID

Sahih Muslim 1745:

> *The Prophet (ﷺ) was asked about the pagans who are attacked by night, and their women and children are killed. He said: 'They are from them'.*

As we can see from the hadith above. The Messenger ﷺ allows the killing of women and children during the night raids. This is due to the fact that at night the women and children may be indistinguishable from the adult male kuffar, so the Muslim army is forced to attack their women and children to reach them.

This is no different from when the Mujahidin attack the countries of the west. In order to reach the men, they will have to go through the women and children as well.

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WHAT THE HANAFIS SAID

Al-Sarakhsi, citing Muhammad ibn al-Hasan (Sharh al-Siyar al-Kabir 4/1467):

> *"He said that there was nothing wrong with the Muslims burning the polytheist's strongholds or flooding them with water; setting up catapults against them; cutting off their water; or putting blood, dung, or poison in their water to befoul it for them. This is because we have been commanded to subdue them and break their strength. All these things are military tactics that will cause their strength to break; they derive from obedience, not disobedience to what has been commanded. Furthermore, all these things damage the enemy, which is a cause for the acquisition of reward. Allah has said,* **{Nor gain them from any enemy, but a righteous deed is thereby written to their account.}** *(Qur'an 9:120). One abstains from none of this while there are Muslim prisoners of war or Muslims with safe-conduct, young or old, men or women, among them, even if we know about it; for there is no way to avoid striking them while still obeying the commandment to subdue the polytheists. What cannot be avoided, must be Pardoned."*

Al-Sarakhsi (al-Mabsut 10/65):

> *"There is nothing wrong with releasing water into the enemy's city, burning them with fire, or bombarding them with the*

catapult, even if there are children or Muslim prisoners of war or traders among them."

Al-Kasani said in (Badayi' al-Sanayi', 7/101):

"*There is nothing wrong with burning their strongholds, flooding them with water, devastating them and destroying them on top of them, or setting up a catapult against them. Allah has said,* **{They destroy their houses with their own hands, and the hands of the believers.}** *(Qur'an* 59:2*). All of this belongs to war, with its implicit overcoming, subduing, and enraging of the enemy. The immunity of possessions derives from the immunity of their possessors, and the latter have no immunity even from death. How then could their possessions be immune*"

Al-'Ibadi (al-Jawharah al-Nayyirah, 2/258):

"*If they refuse, they ask Allah Almighty to help against them, because He is the Helper of His friends and the destroyer of His enemies. The author's words, They set up catapults against them, means that they set them up against their strongholds and destroy them, as the Prophet, may Allah bless him and grant him peace, set them up against the people of al-Ta'if. The author said, 'And burned them, because the Prophet burned al-Buwayrah, a place with date-palms near Medina. He said, 'They released water against them, cut down their trees, and ruined their crops, because that will break their strength and disrupt their unity. It has been reliably handed down that the*

Prophet 'besieged the Banu alNadir and commanded that their date-palms be cut down, and he besieged the people of al-Ta'if and commanded that the vineyards be cut down The author said, 'There is nothing wrong with bombarding them even if there is a Muslim prisoner of war or trader among them, meaning bombarding them with arrows, stones, or catapults; for by bombarding one repels general harm by defending the Muslim community, while killing the trader and prisoner of war are individual harm."

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WHAT THE MALIKIS SAID

Ibn al-'Arabi (Ahkam al-Qur'an, 4/176):

> "*Authorities have differed about devastating and burning enemy territory and cutting down their crops. There are two opinions9 . The first is that it is permissible. [Malik] said so in al-Mudawwanah. The second is that if the Muslims know that these things will be theirs, they do not do it; if they have no such hope, they do it. [Malik] said this in al-Wadihah, and the Shafi'is dispute with him about this. The correct opinion is the first. The Messenger of Allah, may Allah bless him and grant him peace, knew that the date-palms of the Banu al-Nadir would be his, yet he cut them down and burned them so as to damage and weaken the Banu al-Nadir and induce them to depart. Destroying some property for the sake of the rest is permitted by religious law and approved by reason*"

Ibn Farhun (Tabsirat al-Hukkam, 2/95):

> "*The enemy is fought by every means, even by fire if there is nothing else and one is afraid of him. If the enemy is not feared, there are two opinions. There is no disagreement about bombarding their ships and their strongholds by means of catapults, even if Muslims are present in them.*"

Al-Mawwaq (Al-Taj wa-al-Iklil, 4/544):

> "*By cutting off water and by a machine. Ibn al-Qasim said [this means] that there is nothing wrong with bombarding their strongholds by means of the catapult and cutting off their provisions and water, even if there are Muslims and children among them. Ashhab also said this. [Malik] said in al-Mudawwanah that there is nothing wrong with burning their villages and strongholds, flooding them with water, plundering them, cutting down fruit trees, and so forth, because Allah has said,* **{Neither tread they any tread enraging the unbelievers, nor gain any gain from any enemy, but a righteous deed is thereby written to their account.}** *(Qur'an 9:120). The Prophet cut down and burned the datepalms of the Banu al-Nadir.*"

Al-Kharashi (Sharh Khalil, 3/113):

> "*One may fight the enemy with all means of warfare if they do not accept the summons [to Islam]. One may cut off their water so that they die of thirst; one may divert water against them so that they die of drowning, according to common usage; or they may be killed by implements, such as by striking with the sword, piercing with the spear, bombardment by catapult, or any similar implements of war.*"

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WHAT THE SHAFI'IS SAID

Al-Shafi'i (Kitab al-Umm, 4/257):

> "*If the enemy fortifies himself on a hill, by a stronghold, by entrenchment, or by scattering caltrops, or any kind of fortification, they may be bombarded with catapults, siege engines, fire, scorpions, snakes, and anything hateful to them. The fighters may divert water against them to drown them or so that they become bogged down in mud. All this may be done whether or not there are children, women, and monks with them ±because the abode has not become immune by profession of Islam or treaty. Similarly, there is nothing wrong with burning their fruit trees and other trees and devastating their cultivated land and any of their inanimate possessions.*"

Al-Hafiz Ibn Hajar al-'Asqalani (Fath al-Bari, 6/155):

> "*The majority of scholars have held it permissible to burn and devastate in enemy territory. Al-Awza'i, al-Layth, and Abu Thawr considered it reprehensible, arguing on the basis of Abu Bakr's advice to his armies that they should do nothing of the sort. Al-Tabari replied that the prohibition is predicated on intention, rather than if they do so in the course of the fighting, as happened when the catapult was set up against al-Ta'if. He replied similarly with regard to the prohibition on killing women and children. Most scholars have held this opinion. Killing by drowning is a similar case. Others have said that Abu*

Bakr forbade his armies to do these things only because he knew that those lands would be conquered and therefore wanted to preserve them for the Muslims. Allah knows best."

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WHAT THE HANBALIS SAID

Ibn Qudamah (al-Mughni, 9/230):

> *"Al-Khiraqi said, When the enemy is fought, they are not burnt with fire. When one has power over the enemy, one may not burn him with fire. We know of no disagreement about this. Abu Bakr al-Siddiq, may Allah be pleased with him, used to order that the people who apostatized after the Prophet's death should be fought with fire, and Khalid ibn al-Walid did this at his command. Today,however, I know of no disagreement among scholars concerning this. As for bombarding them with fire before taking them: if they can be taken without fire, one may not bombard them with it, because they fall under the category of those over whom one has power. However, if one is powerless against them without fire, one may do so, according to what most scholars hold. So said al-Thawri, al-Awza'i, and al-Shafi'i. The same holds for opening the floodgates against them to drown them: if they can be overcome without it, it is not permissible, since this involves annihilating women and children, whom it is forbidden to annihilate intentionally. However, if they cannot be overcome otherwise, it is permissible. Night raids that involve this are also permissible, and one may set up a catapult against them. The plain sense of the words of Ahmad [ibn Hanbal] is that it is permissible both when there is need and when there is not."*

Al-Buhuti (Kashshaf al-Qina·, 3/49):

> *“Likewise they may be bombarded, viz., the infidels, with fire, snakes, and scorpions shot from catapults. They may be smoked out of underground dens; watercourses may be opened to drown them; and their strongholds and cultivated lands may be conquered, i.e., destroyed, because that comes under the same heading as night raids. 'If one has power over them, one must not burn them. This is because of the hadith: 'Allah has enjoined benevolence on everything. If you kill, kill in a good manner. If you slaughter animals, slaughter in a good manner. And the Prophet, may Allah bless him and grant him peace, said, 'Only Allah, the master of fire, punishes with fire. (Abu Dawud transmitted the hadith.) However, Abu Bakr commanded that the people who apostatized after the Prophet’s death should be fought with fire, and Khalid ibn al-Walid did this at his command.”*

He also said (Sharh Muntaha al-Iradat, 1/623):

> *“Also, it is permitted 'to bombard them viz., the infidels, 'with a catapult.This is explicit, because the Prophet 'set up a catapult against alTa’if. The report is transmitted by al-Tirmidhi with a gap in the chain of transmission. Also, 'Amr ibn al-’As set up catapults against Alexandria. The plain sense of the words of Ahmad [ibn Hanbal] is that it is permissible both when there is need and when there is not. Also it is permissible to bombard them with fire, and*

it is permissible 'to cut off the road, i.e., the highway, and cut off water from them, 'or open it to drown them. And it is permitted to destroy their cultivated land, even if it includes annihilating some women and children, because it falls under the same rule as night raids."

Al-Rahibani (Matalib Uli al-Nuha, 2/516):

"*Also it is permitted 'to bombard them with the catapult. This is explicit, 'because the Prophet set up a catapult against al-Ta'if. AlTirmidhi transmitted the report with a gap in the chain of transmission. Also, Amr ibn al'As set up catapults against Alexandria. The plain sense of the words of Ahmad [ibn Hanbal] is that it is permissible both when there is need and when there is none. Also they may be bombarded with 'fire and things like scorpions, such as adders. 'They may be smoked out of underground dens, i.e., excavations in the ground, as defined in the dictionary al-Qamus. Also it is permitted 'to cut off the road, i.e., their highway, and to cut off 'the water from them, 'or open it to drown them. And it is permitted 'to destroy their cultivated land, even if it includes annihilating some women and children unintentionally, because it falls under the same rule as night raids.*"

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EXPLANATION OF THE PROHIBITION OF KILLING WOMEN AND CHILDREN

Both Sahihs contain an authentic tradition attributed to Ibn Umar, a Companion of the Prophet:

> "A *woman was found slain on one of the Prophet's military expeditions. The Messenger of Allah, may Allah bless him and grant him peace, thereupon condemned the killing of women and children.*"

In the Sahih of Muslim there is an authentic tradition from Buraydah ibn al-Husayb, a companion of the Prophet, who said: Whenever the Messenger of Allah, may Allah bless him and grant him peace, appointed a commander over an army or expedition, he urged him to fear Allah and take good care of the Muslims who were with him. Then he would say:

> "*Attack in the Name of Allah and in Allah's Path. Fight anyone who denies Allah. Attack, but do not exceed the bounds. Do not act treacherously, do not mutilate, and do not kill a child.*"

There are other texts also, and all indicate that killing women and children is prohibited. The use of such weapons will kill them. Reply to this argument: Other authentic texts prove that it is

permitted to kill women and children in the case of a night attack or invasion. There is the tradition from Sa'b ibn Jaththamah, a Companion of the Prophet. Putting these texts together, scholars concluded that the prohibition applies to cases when women and children can be distinguished from others; when they cannot be distinguished from others, it is permitted to kill them collaterally with the others. We have cited the scholar's opinions in the two preceding chapters. They specifically allowed the killing of women and children when they cannot be distinguished. We have cited al-Shafi'is pronouncement in al-Risalah, p. 299: In our view, and Allah alone knows best, the meaning of the prohibition on killing women and children is on intentionally seeking to kill them when they can be recognized and distinguished from those who have been ordered to be killed. The meaning of the Prophet's words, "They are of them", is that they unite two traits: they do not have the legal factor of faith, which spares one's blood, nor do they live in an abode of faith, which prevents an attack on that abode. They cannot be distinguished when they are hit by these weapons, and so the legal ruling is like the one that applies to night attacks, bombardment by catapult, and the like. Some scholars, cited in the preceding chapter, said that by analogy the ruling applicable to the catapult applies to anything else that causes general destruction. Al-Shafi'i, for example, said, Judge analogously whatever belongs to your the same category of causing general destruction.

— وصلى الله على نبينا محمد وعلى اله وصحبه وسلم تسليماً —